

Victor D. Del Vecchio
Assistant General Counsel



185 Franklin Street, 13th Floor
Boston, MA 02110-1585

Phone 617 743-2323
Fax 617 737-0648
victor.delvecchio@verizon.com

June 29, 2006

Ms. Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301-2429

Re: DT 04-019, Request for Hearing, Quality of Service Customer Survey

Dear Ms. Howland:

Verizon New Hampshire (Verizon NH) is in receipt of your Secretarial Letter of June 28, 2006. For the reasons stated below, Verizon NH respectfully disagrees with the Commission's decision to retain a consultant for the purpose of conducting a statewide customer service survey and, to the extent the Commission intends to compel Verizon NH to bear the costs of those undertakings, requests the opportunity for a hearing to present evidence against doing so.

First, as reiterated at the status conferences of February 9 and April 3, 2006, Verizon NH has provided and continues to provide quality service to its customer in New Hampshire. In that regard, Verizon NH consistently exceeds the large majority of monthly NARUC standards and, more importantly, regularly conducts independent surveys of business and residence customers that reveal that over 90% of its customers rate their installation or repair experience as being satisfactory, very good or outstanding. The PUC's retention of a consultant for the purpose of designing and then conducting an additional statewide survey is unnecessary. No evidence or persuasive data have been presented by Staff or any party that Verizon NH's existing, comprehensive monthly surveys do not adequately and fairly gauge customer satisfaction.

Second, the cost of retaining a consultant and then conducting a statewide survey can and likely will be substantial, costing in the range of hundreds of thousands of dollars (depending on the level of precision desired) if done correctly. While the Secretarial Letter is silent as to who would bear the cost of these undertakings, Verizon NH understands that the Commission intends for Verizon NH to bear that considerable expense. In these difficult

economic times of reduced revenues, access line loss, usage decline and heightened competitive activity – particularly in New Hampshire – Verizon NH should not be required to spend thousands of dollars on additional, regulatory requirements such as this, especially since such surveys are already conducted. Verizon NH's dilemma is underscored by the fact that the expense is asymmetrically imposed solely on Verizon NH and no other competitor, a result that is particularly difficult given Verizon NH's ever-dwindling numbers of access lines in major cities like Manchester, Nashua, Salem and Portsmouth – as Staff explained at the June 6, 2006 prehearing conference in Docket DT 06-072.¹ Moreover, if the Commission wishes to determine that the surveys already conducted by Verizon accurately reflect consumer satisfaction levels, it could avail itself of the audit results of the survey process that Verizon NH has already offered to provide.

Third, the Commission lacks the authority to compel Verizon NH to conduct a statewide survey at its expense, especially since no finding exists that the quality of its service is inadequate or that the monthly surveys Verizon already conducts are not fairly reflecting overwhelming customer satisfaction. The New Hampshire Supreme Court has held that “[t]he assessment and collection of taxes must be based on legislative authority.” See *King Ridge, Inc. v. Sutton*, 115 N.H. 294, 296 (1975); *New England Tel. & Tel. Co. v. City of Rochester*, 144 N.H. 118, 120 (1999). No legislative authority exists allowing the Commission to assess, levy or collect a tax, surcharge or fee to fund a statewide customer service survey.

For example, RSA 363-A:1, which provides for the PUC to assess all New Hampshire utilities for the PUC's annual operating expenses, is inapplicable on its face. It does not address case-specific assessments as is proposed here. Nor does RSA 365:37 (“Expense of Investigations”) apply. Subsection I pertains to instances where the PUC must “pass upon any petition” or involve matters that “require[] the commission’s approval.” Similarly, subsection II applies only to “experts, accountants or other assistants” – not special projects like an expensive, statewide customer survey related solely to one utility.

In short, an assessment of costs or fees cannot appropriately be used to generate revenue for special projects. See *Opinion of the Justices*, 101 N.H. 549, 137 A.2d 726 (1958). By way of illustration, in *Appeal of Association of New Hampshire Utilities*, 122 N.H. 770 (1982), utilities appealed a Commission assessment of expenses for the Governor's Council on Energy. The New Hampshire Supreme Court analyzed when a “license fee” imposed on public utilities is permissible and found the assessment to be improper. The Court explained that such fees may properly be imposed in three situations:

¹ Based on information available to Staff and the Commission, Staff counsel observed: “I would add that Staff’s preliminary research based on annual reports from land line providers, indicates that CLECs have achieved a penetration rate of approximately 40 percent for residential and business customers in Verizon’s Rate Group E market, which include exchanges such as Manchester, Nashua, Salem, and Portsmouth.” 6/8/06 Tr. at 27, Docket DT 06-072.

1. to regulate a business requiring strict regulation because it represents a social problem and falls under the jurisdiction of the state's police power;
2. where a business requires special services or takes advantage of such services; and
3. for inspection and regulation of the business, bearing a relationship to and approximating the expense of issuing the license and inspecting and regulating the business licensed.

Compelling only Verizon NH to fund a redundant statewide survey that may cost hundreds of thousands of dollars fails under all three prongs. "The PUC is a creation of the legislature and as such is endowed with only the powers and authority which are expressly granted or fairly implied by statute." *Appeal of Public Service Co. of New Hampshire*, 122 N.H. 1062, 1066 (1982). "Furthermore, the PUC cannot do indirectly what it cannot do directly; namely 'take' someone's property without full and fair compensation." *Id.* at 1070 "We see no greater right of the government to 'take' merely because a regulated utility is involved." *Id.* at 1071.


Finally, it is a well-founded principle of constitutional and administrative law that due process requires an opportunity for a hearing when an agency engages in decision-making that involves the resolution of contested facts involving private rights. *See Society for Appeal of Toczko*, 136 NH 480 (1992); RSA 541-A:31, I ("An agency shall commence an adjudicative proceeding if a matter has reached a stage at which it is considered a contested case or, if the matter is one for which a provision of law requires a hearing only upon the request of a party, upon the request of a party"); RSA 541-A:1, IV ("Contested case' means a proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after notice and an opportunity for hearing"); *Statewide Electric Utility Restructuring Plan*, Docket DR 96-150, Order No. 22,316 dated September 17, 1996 at 10 ("In this case, PSNH has not been denied any procedural safeguard relative to a 'fact-finding process.' As we noted ... we have not precluded PSNH or any other party from seeking trial-like procedures relative to contested facts."); *see also* Puc 102.01 ("Adjudicative proceeding"), Puc 102.04 ("Contested case"), and Puc 102.07 ("Hearing means a properly noticed session held in a contested case before the commission or its designee which provides for opportunity of any party, intervenor or commission staff to present evidence and conduct cross-examination").

Verizon NH's economic interests and private rights are directly affected by a course of action that requires it to fund the PUC's retention of a consultant for the purpose of then conducting a statewide survey – both at Verizon NH's expense. Verizon NH contests the need and appropriateness of such requirements. If Verizon NH has misunderstood the Commission's intention, however, it respectfully requests clarification from the PUC.

Debra Howland, Director
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Thank you for your attention to this matter.

Very truly yours,



Victor D. Del Vecchio

cc: Service List